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**POWER PURCHASE AGREEMENT**

Between

**CORDOVA ENERGY COMPANY LLC**

a Delaware limited liability company

and

**MIDAMERICAN ENERGY COMPANY**

An Iowa corporation

July 19, 2000

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## POWER PURCHASE AGREEMENT

**THIS POWER PURCHASE AGREEMENT** ("Agreement") is entered into as of July 19, 2000 (the "Effective Date"), by and between **CORDOVA ENERGY COMPANY LLC**, a Delaware limited liability company ("Seller") and **MIDAMERICAN ENERGY COMPANY**, an Iowa corporation ("Buyer"). Buyer and Seller may be individually referred to herein as a "Party" and, collectively, as the "Parties".

**WHEREAS**, Seller has commenced construction of the Project (as defined below);

**WHEREAS**, Buyer desires to purchase from Seller, and Seller desires to sell and make available to Buyer, capacity and energy from the Project, subject to the terms, exceptions and conditions of this Agreement;

**WHEREAS**, the Parties desire to enter into this Agreement to set forth their respective rights and obligations in connection with the sale of capacity and energy from Seller to Buyer;

**NOW, THEREFORE**, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Certain Defined Terms.

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below.

"Actual Heat Rate" has the meaning set forth in Exhibit D.

"Additional Fuel Costs" has the meaning set forth in Exhibit D.

"Adjusted Buyer Startup Fuel Quantity" means, with respect to any Startup of a Unit, the sum of (i) the product of (A) the quantity of Fuel actually used for such Startup and (B) 25%; and (ii) the product of (A) the quantity of Fuel actually used for such Startup, (B) 50% and (C) a fraction, the numerator of which is the quantity of Energy scheduled by Buyer from the Project during the continuous period of operation of such Unit and the denominator of which is the total quantity of energy (including Scheduled Energy and Other Customers' Energy) scheduled for delivery from the Project during such continuous period of operation.

"Affiliate" means any Person that directly or indirectly Controls or is Controlled by or is under common Control with, the Person in question.

"Aggregate Energy" has the meaning set forth in Section 5.3(b).

"Aggregate Energy Demand" means, with respect to any period of time during the Delivery Term, the total quantity of energy (including Energy Scheduled by Buyer and Other Customers' Energy) scheduled for delivery from the Project during such period of time.

"Aggregate On Peak Energy" has the meaning set forth in Section 5.3(a).

"Alternative Delivery Point" has the meaning set forth in Section 4.3(c).

"Alternative Generation" means (i) any generation from any source other than the Project or (ii) generation from the Project delivered at an Alternative Delivery Point, in each case when the deliveries from the Project to the Delivery Point are interrupted or curtailed.

"Alternative Generation Fuel Quantity" means, with respect to any Day, a quantity of gas equal to the product of (i) the quantity of Energy delivered to Buyer from the Project hereunder pursuant to Section 4.3(c) on such Day and (ii) the Actual Heat Rate calculated in accordance with Exhibit D.

"Annual Availability Factor" has the meaning set forth in Section 5.3(b).

"Annual Escalation Factor" means, (i) for the first Contract Year, one (1), and (ii) for each Contract Year thereafter, the product of 1.025 and the Annual Escalation Factor for the immediately prior Contract Year.

"Applicable Capacity" has the meaning set forth in Section 5.3(a).

"Applicable Requirements" means any and all applicable laws, regulations, announcements, codes, directives, judgments, decrees, orders or interpretations of any court, arbitrator or governmental instrumentality and any valid waivers, exemptions, variances, permits, licenses, authorizations, orders, consents or conditions of or from, in any such case, any governmental instrumentality, court or other governmental entity having jurisdiction over the matter in question.

"Applicable Schedule" means, with respect to any time during the Delivery Term, the applicable quantities of Energy Scheduled in accordance with Section 4.2 for each hour of a scheduling period as in effect at such time.

"Business Day" means any Day other than a Day that is a Saturday, Sunday or legal holiday in the State of Illinois.

"Buyer" means MidAmerican Energy Company, an Iowa corporation.

"Buyer Auxiliary Boiler Fuel Quantity" means, with respect to any Day, the product of (i) the quantity of Fuel actually required for the operation of the Project's auxiliary boiler during such Day and (ii) fifty percent (50%).

"Buyer Fuel Supply Requirement" or "Buyer's Fuel Supply Requirement" means, for any Day, the sum, without duplication, of (i) the Buyer Startup Fuel Quantity for each Startup (or portion thereof) that occurs during such Day, (ii) each Buyer Operating Fuel Quantity for each hour of such Day, (iii) the Buyer Auxiliary Boiler Fuel Quantity for such Day and (iv) the Alternative Generation Fuel Quantity for such Day.

"Buyer Hourly VOM Charge" means, with respect to any hour: (i) if the Project does not operate or if Buyer does not schedule the delivery of any Energy during such hour, zero (0); and (ii) if Buyer schedules Energy and the Project operates during such hour, the product of (x) \$533, if one Unit operates during such hour, or \$1,066, if both Units operate during such hour, and (y) a fraction, the numerator of which is the quantity of Energy Scheduled on behalf of Buyer during such hour and the denominator of which is the total quantity of energy (including Energy Scheduled by Buyer and Other Customers' Energy) scheduled for delivery from the Project during such hour.

"Buyer Operating Fuel Quantity" means, with respect to any hour, the product of (i) the quantity of Fuel used for the operation of the Project (other than the Project auxiliary boiler) during such hour and (ii) a fraction, the numerator of which is the Energy scheduled by Buyer and the denominator of which is the total quantity of energy (including Energy scheduled by Buyer and Other Customers' Energy) scheduled for delivery from the Project during such hour.

"Buyer Startup Costs" means, with respect to any Startup of a Unit, (i) if, during the period of continuous operation of a Unit following the Start-Up of such Unit, Buyer does not Schedule the delivery of any Energy from the Project, zero; and (ii) if, during the period of continuous operation of a Unit following the Start-Up of such Unit, Buyer does Schedule any Energy from the Project, the sum of (x) the product of \$2095 and fifty percent (50%) and (y) the product of \$2095 and a fraction, the numerator of which is the quantity of Energy Scheduled by Buyer during such continuous period of operation of the Unit and the denominator of which is the total quantity of energy (including Energy Scheduled by Buyer and Other Customers' Energy) scheduled for delivery from the Project during such continuous period of operation; provided, however, notwithstanding clause (ii), if, with respect to any Startup, Buyer is the only customer of Seller to schedule energy from the Project during the continuous period of operation of the Project following such Startup, then the "Buyer Startup Costs" with respect to such Startup shall mean \$4190.

"Buyer Startup Fuel Quantity" means, with respect to any Startup, the quantity of Fuel actually required by the Project for such Startup; provided, however, if, at the time of any Startup, any Other Customers' Energy is scheduled to be delivered from the Project during the period of time that the Project is scheduled to operate continuously following such Startup, (i) such quantity of Fuel shall be equal to the product of (A) the quantity of Fuel necessary for such Startup and (B) fifty percent (50%).

"Buyer Variable O&M Costs" means, with respect to any Month, the sum of the following:

- (i) the product of \$0.40/MWh times the Contract Quantity (in MWh) for such Month;
- (ii) the sum of each Buyer Hourly VOM Charge for each hour of such Month; and
- (iii) the sum of each Buyer Startup Costs for each Startup that commences during such Month;

provided, however, with respect to any Month during any Contract Year after the first Contract Year, "Buyer's Variable O&M Costs", shall be the product of the foregoing sum and the applicable Annual Escalation Factor.

"Buyer's Monthly Net Capability" means, with respect to any Month, 50% of the Monthly Net Capability for such Month.

"Buyer's Project Capacity" means, with respect to any time, 50% of the Project Capacity at such time.

"Calendar Year" means a calendar year.

"Capacity Test" means a test to determine the Monthly Net Capability of the Project as specified in Exhibit G.

"Claims" means all claims or actions filed by a person other than a Party, and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorney's fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are filed prior to or after the termination of this Agreement.

"ComEd Interconnection Agreement" means an agreement to be entered into between Seller and the Commonwealth Edison Company providing for the interconnection of the Project to the Commonwealth Edison Company system, as amended from time to time, and any replacement agreement.

"Commercial Operation Date" means the first calendar day after the latter of (i) the day on which the Project and its component parts have been accepted by Seller as having passed acceptance and performance testing for substantial completion pursuant to the EPC Contract, and (ii) the day on which the Project has completed a Uniform Rating of Generation Equipment test pursuant to the MAPP Guides, in each case as designated in a written notice by Seller to Buyer; and (iii) the date the electrical interconnection between the Project and the transmission system of Buyer has been constructed and placed into service; provided, however, the Commercial

Operation Date shall in no event be prior to June 1, 2001 unless Seller elects a date between May 1, 2001 and May 31, 2001 and agrees that the Guaranteed Payment for such period prior to June 1, 2001 shall be zero.

"Confidential Information" shall mean all written, recorded or oral information furnished to a Party ("Recipient") by the other Party or its Affiliates ("Disclosing Party"), in connection with the Project or this Agreement and designated by the Disclosing Party as confidential, together with all copies, reproductions, summaries, analyses or extracts thereof or based thereon in the possession of Recipient or in the possession of any of Recipient's Representatives. Confidential Information does not include, however, information which (a) is or becomes generally available to the public other than as a result of a disclosure by Recipient or Recipient's Representatives, (b) was available to Recipient in prior written documents on a non-confidential basis prior to its disclosure by the Disclosing Party or (c) becomes available to Recipient on a non-confidential basis from a Person other than the Disclosing Party or its Affiliates who is not otherwise bound by a confidentiality agreement with the Disclosing Party, or is not otherwise prohibited from transmitting the information to Recipient.

"Connecting Utility" means either or both, as the context so requires, of (i) Commonwealth Edison Company and its successors and (ii) MidAmerican Energy Company and its successors.

"Contract Capacity" means, for each Contract Year, the product of (i) the average of the Monthly Net Capability ratings for each Month of such Contract Year and (ii) fifty percent (50%).

"Contract Quantity" means, with respect to any Month, all of the Energy (in MWh), that Seller sells and delivers, or causes to be delivered, to Buyer pursuant to this Agreement during such Month.

"Contract Term" means the term of this Agreement beginning on the Effective Date of the Agreement and ending on the Termination Date.

"Contract Year" means a twelve-month period commencing on a May 15 after the Commercial Operation Date; provided, however, the first Contract Year shall be the period commencing on the Commercial Operation Date and ending at 2400 CPT on the following May 14 (which May 14 shall in no event be earlier than May 14, 2002).

"Control" means the possession, directly or indirectly, through one or more intermediaries, of either of the following: (a) (i) in the case of a corporation, 50% or more of the outstanding voting securities thereof; (ii) in the case of a limited liability company, partnership, limited partnership or venture, the right to 50% or more of the distributions therefrom (including liquidating distributions); (iii) in the case of a trust or estate, 50% or more of the beneficial interest therein; or (iv) in the case of any other entity, 50% or more of the economic or beneficial interest therein; or (b) in the case of any entity, the power or authority, through the ownership of voting securities, by contract or otherwise, to direct the management, activities or policies of the



entity.

"CPT" means the prevailing time on any given Day in Rock Island County, Illinois.

"Cumulative On Peak Undelivered Energy" has the meaning set forth in Section 5.3(a).

"Cumulative Undelivered Energy" has the meaning set forth in Section 5.3(b).

"Daily Fuel Costs" has the meaning set forth in Exhibit D.

"Day" means a calendar day.

"Delivery Point" means (i) the point of direct electrical interconnection of the Project with the high voltage transmission system of Buyer, and/or the point of direct electrical interconnection of the Project with the high voltage transmission system of Commonwealth Edison Company, as designated by Buyer from time to time, or (ii) any other point mutually agreed upon by Buyer and Seller in writing.

"Delivery Term" means the period commencing at the hour ending 0100 CPT on the Commercial Operation Date through and including the hour ending 2400 CPT on the Termination Date.

"Effective Date" has the meaning set forth in the introductory paragraph of this Agreement.

"Energy" means the electric energy to be delivered by Seller to Buyer pursuant to this Agreement.

"Energy Imbalance" has the meaning set forth in Section 4.4.

"Energy Imbalance Charges" means the charges assessed by the Connecting Utility or any successor transmission provider (including an RRO), as a result of deviations between energy scheduled and energy delivered or received or between energy delivered and energy received (however named, including, without limitation, "energy imbalances", "oversupply imbalances", or "undersupply imbalances").

"EPC Contract" means the contract(s) for the provision to Seller of services for the design, engineering, procurement and construction of the Project, and any replacement contract.

"EPC Contractor" means the firm or firms retained by Seller to provide services for the design, engineering, procurement and construction of the Project.

"Event of Default" has the meaning set forth in Section 11.1.

"Excess Energy" has the meaning set forth in Section 4.8.

"FERC" means the Federal Energy Regulatory Commission or any successor agency.

"Financing Parties" means the lenders providing construction or term financing or refinancing, as the case may be, with respect to the Project (including a leveraged lease), and any trustee or agent acting on their behalf.

"Fixed Capacity Rate" means (i) for each Month during the Delivery Term prior to May, 2002, the product of (A) the Monthly Percentage for such Month as set forth below, (B) \$7.50 per kW/month; and (C) 12; (ii) for each Month during the Delivery Term after May, 2002, \$7.50 per kW/month and (iii) for May 2002, the average of the rate for May determined by using clause (i) above and the rate determined for a month during the Contract Year commencing 2002 by using clause (ii) above.

*Monthly Percentage:*

<u>Month</u>	<u>Percentage</u>
January	3.53%
February	3.46%
March	1.67%
April	1.99%
May	7.85%
June	13.22%
July	28.90%
August	28.75%
September	4.73%
October	2.54%
November	1.72%
December	1.64%

"Force Majeure" means any cause beyond the reasonable control and without the fault or negligence of the Party relying on such cause to excuse its performance hereunder (such Party, the "Claiming Party"), whether of the kind enumerated below or otherwise, including without limitation the following: (i) any storm, flood, freeze, hurricane, windstorm, lightning, earthquake or other acts of God, fire, explosion, civil disturbance, strike, lockout, labor dispute, act of the public enemy, action of a court, regulatory or other governmental authority (as long as the Claiming Party has not sought, supported, applied for, or assisted in the application for, such regulatory or governmental action), failure to obtain or maintain a governmental permit, license or approval (as long as the applying person has used commercially reasonable efforts to apply for, obtain and maintain such permit, license or approval), the failure of transmission facilities or a constraint on the transmission system for either Connecting Utility that precludes transmission of the Energy to the Delivery Point or from the Delivery Point to the first available resale market or (ii) any unavailability or interruption in the supply of breakdown of pipelines, facilities and/or

equipment other than as a result of improper maintenance or the negligence of the Claiming Party; provided, however, that no obligation to make payments for energy delivered or other services rendered shall be excused by the occurrence of an event of Force Majeure; and provided, further, that the following acts, events or causes shall not constitute an event of Force Majeure: (a) the loss of Buyer's resale markets; (b) Buyer's inability economically to use or resell energy or capacity purchased hereunder; (c) any lack of profitability to Seller of the Project; and (d) the failure of or a constraint on transmission facilities except to the extent that the Claiming Party (x) owns and controls such facilities and the capacity thereon, (y) has contracted for firm transmission thereon or (z) would be similarly affected even if it had contracted for firm transmission thereon.

"Fuel" means the natural gas used in the operation of the Project.

"Fuel Delivery Point(s)" means the receipt points for transportation service under the Gas Distribution Agreement, which are the proposed point of interconnection between the LDC's Nitrin line and Northern Border Pipeline Company and the point of interconnection between such Nitrin line and Natural Gas Pipeline Company of America.

"Fuel Index" means, for any day, the Midpoint daily price index for deliveries on such day for the Chicago city gate, large end users, as published in FT Energy's *Gas Daily*. If the Fuel Index ceases to exist, becomes unavailable, is not published for a period of at least ten (10) days or is changed so that it is intended to measure something materially different from the average daily prices for gas delivered to large end users at or near the Fuel Delivery Point, the Parties shall negotiate in good faith to agree upon a new index that reasonably measures average daily prices for natural gas delivered to large end users at or near the Fuel Delivery Point. If the Parties do not agree that an alternate index is appropriate or are unable to agree upon an alternate index, within thirty (30) days after a written request by a Party therefor, then a Party may refer the matter to arbitration in accordance with Section 16.9. The arbitrator shall be required to select a replacement alternate index that most reasonably measures average daily prices for gas sold and delivered to large end users at or near the Chicago city gate.

"Fuel Transportation Charge" means, with respect to any Month, the sum of (i) \$16,500 and (ii) the product of \$.025/MMBtu and Buyer's Fuel Supply Requirement (in MMBtu) for such Month.

"Fuel Savings" has the meaning set forth on Exhibit D.

"Gas Distribution Agreement" means the Firm Natural Gas Distribution Agreement dated as of July 6, 1999, between Seller and MidAmerican Energy Company, an Iowa corporation, as amended and in effect from time to time.

"Guaranteed Heat Rate" has the meaning set forth in Exhibit D.

"Guaranteed Payment" means, for any Month, the product of the applicable Contract Capacity (expressed in kW) and the applicable Fixed Capacity Rate, as such amount may be

adjusted in accordance with Section 5.3; provided, however, if the Commercial Operation Date occurs on a Day other than the first Day of a Month, then the Guaranteed Payment for the Month in which the Commercial Operation Date occurs shall be the product of (i) the Guaranteed Payment calculated in the absence of this proviso and (ii) a fraction, the numerator of which is the number of Days in such Month after the Day prior to the Commercial Operation Date and the denominator of which is the number of Days in the Month.

"Hourly Energy" has the meaning set forth in Section 5.3(b).

"Hourly On Peak Energy" has the meaning set forth in Section 5.3(a).

"Hourly On Peak Undelivered Energy" has the meaning set forth in Section 5.3(a).

"Hourly Undelivered Energy" has the meaning set forth in Section 5.3(b).

"ISO" means any Person (other than the Connecting Utility) that becomes responsible as independent system operator for either or both of the transmission systems to which the Project is connected.

"kW" means kilowatt.

"kWh" means kilowatt-hour.

"Late Payment Rate" means a per annum rate of interest equal to the Prime Rate plus three percent (3%); provided, the Late Payment Rate shall never exceed the maximum lawful rate permitted by applicable law.

"LDC" means MidAmerican Energy Company, an Iowa corporation, and its successors.

"MAIN" means the MidAmerican Interconnected Network or its successors, including any ISO responsible for the MidAmerican Interconnected Network or its successors.

"MAPP" means the Mid-Continent Area Power Pool or its successors, including any ISO responsible for the Mid-Continent Area Power Pool or its successors.

"MAPP Guides" means the Regional Reliability Handbook adopted by MAPP and in effect from time to time, or any replacement document.

"MEC Interconnection Agreement" means the Interconnection Agreement dated as of April 2, 1999, between Seller and MidAmerican Energy Company, as amended from time to time, and any replacement agreement.

"Meter" means any or all, as the case may be, of the meters of the Project and the Connecting Utilities that measure the amount of energy transmitted from the Project to the transmission system of each Connecting Utility.

"Minimum Load Condition" has the meaning set forth in Section 4.7.

"Month" means a calendar month.

"Monthly Net Capability" has the meaning set forth in Exhibit G.

"MMBtu" means one million British thermal units.

"MNC" has the meaning set forth in Exhibit G.

"MW" means a megawatt. One MW is equal to 1,000 kW.

"MWh" means a megawatt-hour. One MWh is equal to 1,000 kWh.

"NERC" means the North American Electric Reliability Council or its successors.

"Non-Summer Period Guaranteed Payments" means, for any Contract Year, the aggregate Guaranteed Payments payable with respect to September, October, November, December, January, February, March, April and May of such Contract Year (it being understood that such Guaranteed Payments shall be adjusted in accordance with the proviso to the definition of Guaranteed Payments, if applicable).

"On Peak Availability Factor" has the meaning set forth in Section 5.3(a).

"On Peak Hours" means all hours ending 0700 through and including 2200 CPT for each weekday (i.e. Monday through Friday) during the Delivery Term (excluding NERC designated holidays).

"Other Customers' Energy" means energy scheduled by or delivered to, as the context may require, other customers of Seller from the Project.

"Party" means either Seller or Buyer and "Parties" means both of Seller and Buyer.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

"Pipeline Transportation Agreement" means the gas transportation agreement between Buyer and Northern Border Pipeline Company or any other upstream pipeline delivering Buyer's Fuel Supply Requirement at the Fuel Delivery Point(s).

"Planned Outage" means any outage of the Project due to inspection, testing, maintenance, repair or overhaul, as scheduled by Seller in accordance with the requirements of Exhibit H.

"Prime Rate" means the prime lending rate as may from time to time be published in the *Wall Street Journal* or any successor publication under "Money Rates" or a successor heading, provided that if more than one prime rate is published under such heading, the Prime Rate shall be the average of such rates so published. If the *Wall Street Journal* ceases to be published or if publication is suspended, the Parties shall agree on a successor or publication that reports comparable prime lending rates.

"Project" means the gas-fired combined cycle electrical generation facility proposed to be located in Rock Island County, Illinois, which is further described in Exhibit A.

"Project Capacity" means the capacity actually available from the Project to supply energy.

"Project Constraints" has the meaning set forth on Exhibit C.

"Prudent Industry Practice" means any of the practices, methods, techniques, standards and acts required or approved from time to time by a significant portion of the electric power industry in the geographic region covered by MAPP and MAIN, or any of the practices, methods, techniques, standards, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with the Applicable Requirements, good business practices, reliability, safety, environmental protection, and expedition. "Prudent Industry Practice" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be practices, methods or acts generally accepted from time to time in the geographic region covered by MAPP and MAIN.

"Ratings Reaffirmation" means, with respect to a specified event, a confirmation from Moody's Investor's Service, Inc. and Standard and Poor's Group that a lowering of the then-current ratings of the Cordova Funding Series A Senior Secured Bonds will not result from such event.

"Replacement Cost" has the meaning set forth in Section 3.2.

"Representatives" of a Person shall mean any Affiliates of such Person and directors, officers, employees, agents or Controlling Persons of such Person or its Affiliates.

"RRO" or "Regional Reliability Organization" means MAIN, MAPP or any ISO responsible for MAIN or MAPP.

"Schedule" or "Scheduled" means the acts of Buyer and Seller pursuant to Section 4.2 setting forth a written schedule requesting and accepting the delivery of Energy by Seller to Buyer during the Delivery Term.

"Scheduled Energy" means the Energy requested by Buyer pursuant to Sections 4.2(b) or

4.2(e) and accepted by Seller pursuant to Sections 4.2(c) or 4.2(e), as may be altered in accordance with Sections 4.2(e) and (f).

"Scheduling Fees" means fees assessed by any Person to schedule the delivery of the Energy.

"Seller" means Cordova Energy Company LLC, a Delaware limited liability company.

"Startup" or "Start-Up" means, with respect to either Unit, a firing of the combustion turbine of such Unit. The period of a Startup of a Unit begins at the commencement of such firing and ends when the Unit's generators are synchronized with the Connecting Utility.

"Stranded Costs" means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities or any transmission or distribution providers, in order to recoup the expenses and liabilities associated with stranded investments including without limitation any stranded costs assessed or levied pursuant to 18 C.F.R. §35.26.

"Summer Hours" means, for any Calendar Year, each of the hours between 0600 to 2200 CPT on each weekday (i.e. Monday through Friday) excluding NERC holidays, from June 1 through August 31 of such Calendar Year.

"Summer Period" means, for any Contract Year, the period commencing June 1 (or, in the case of the first Contract Year, the first Day of such first Contract Year if such first day occurs during the period after June 1 and before September 1) through August 31 of such Contract Year. If the first Day of the first Contract Year occurs after August 31, there shall be no Summer Period for such first Contract Year.

"Summer Period Guaranteed Payments" means, for any Contract Year, the aggregate Guaranteed Payments payable with respect to June, July and August of such Contract Year (it being understood that such Guaranteed Payments shall be adjusted in accordance with the proviso to the definition of Guaranteed Payments, if applicable).

"Surcharge Rate" means \$0.30 per MWh.

"Termination Date" means May 14, 2004 or such earlier date as this Agreement may be terminated as provided for in this Agreement.

"Total Transmission Services" means all transmission services, ancillary services, control area services and such other services associated with the transmission of electric energy from one location to another.

"Transmission Costs" means all costs associated with line losses, congestion charges, inadvertent energy flows, MAPP and MAIN charges, charges assessed by the applicable Connecting Utility and other applicable system costs or charges associated with the transmission

of electric energy from one location to another.

"Unit" means, with respect to the Project, (i) either one of the combustion turbine/generator trains and (ii) to the extent utilized in connection with such combustion turbine/generator train, the steam turbine/generator.

"Unplanned Outage" means (i) an unplanned component failure or other condition that requires the Project, or part thereof, to be removed from service immediately or that can be deferred but requires the Project, or part thereof, to be removed from service before the next Planned Outage (or that prevents a Start-Up), (ii) an unplanned deration of the Project that requires an immediate reduction of capacity or that can be deferred but requires a reduction of capacity prior to the next Planned Outage, or (iii) any other unplanned interruption or reduction in generation from the Project for any reason.

"Variable Energy Payment" means a monthly charge equal to the sum of (i) the Fuel Transportation Charge for such Month and (ii) the Buyer Variable O&M Costs for such Month.

**1.2 Interpretation.** In this Agreement:

(a) the table of contents, headings, and Article and Section numbering are for convenience only and shall be ignored in construing this Agreement;

(b) the singular includes the plural and vice versa;

(c) references to Articles, Sections, Recitals, and Exhibits are, unless the context otherwise requires, references to Articles and Sections of, and Recitals and Exhibits to, this Agreement;

(d) the Exhibits to this Agreement form a part of this Agreement;

(e) the words "hereof", "herein", "hereinafter", "hereunder", "hereby", "hereto", and similar words refer to this entire Agreement and not to any particular Article, Section, Recital, or Exhibit;

(f) if any payment hereunder is required to be made on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day, *provided* that if such next succeeding Business Day is not in the same Month as the date required for payment, such payment shall be made on the immediately preceding Business Day; and

(g) any reference to a time shall be a reference to CPT unless otherwise specified.

**1.3 Rules of Conduct.** In this Agreement:



(a) unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed; and

(b) in carrying out their obligations and duties under this Agreement, each Party shall have an implied obligation of good faith.

## **2. TERM**

### **2.1 Term.**

(a) Subject to Article 9 hereof, this Agreement is effective from the Effective Date through the Termination Date.

(b) On the Termination Date, the Parties will no longer be bound by this Agreement, except (i) to the extent necessary to enforce any rights or obligations of the Parties arising under this Agreement before the Termination Date, (ii) obligations arising under Section 16.1 and indemnification obligations, which will survive the termination of this Agreement and will continue for two (2) years following the Termination Date, and (iii) rights and obligations arising under Section 12.2, which will survive the termination of this Agreement for a period of one (1) year for the purpose of statements and payment objections.

## **3. PROJECT CONSTRUCTION**

**3.1 Project Design.** Except with the prior consent of Buyer which shall not be unreasonably withheld or delayed, Seller (i) shall cause any design for the Project to conform with Exhibit A hereto and with Prudent Industry Practice and (ii) shall not change the number or design capacity of the Units that comprise the Project as set forth in Exhibit A. For the avoidance of doubt, Buyer shall not withhold such consent to the extent such changes proposed by Seller would not reasonably be expected to have an adverse effect on Buyer.

### **3.2 Project Delay.**

(a) Seller (i) shall use all commercially reasonable efforts to cause the Project (a) to be constructed, (b) to be interconnected to Buyer's transmission system at the Delivery Point and (c) to achieve the Commercial Operation Date, in each case, by June 1, 2001 and (ii) in any event, shall cause the Project (A) to be constructed, (B) to be interconnected to Buyer's transmission system, and (C) to achieve the Commercial Operation Date, in each case, by May 15, 2002 (which dates, for the avoidance of doubt, shall not be extended due to events of Force Majeure); provided, however, the sole and exclusive remedies for any failure of Seller to comply with clause (i) of this sentence shall be that, as provided in Article 5, Buyer's obligations to make the payments contemplated by Article 5 do not commence until commencement of the Delivery Term and the sole and exclusive remedies for failure to comply with clause (ii) of this sentence (subject to Section 3.2(b)) shall be that, as provided in Article 5, Buyer's obligations to make the payments contemplated by Article 5 shall not commence until commencement of the

Delivery Term and that Seller shall pay to Buyer the Replacement Cost (as defined below). For purposes of this Section, "Replacement Cost" shall mean an amount equal to the positive difference, if any, obtained by subtracting (i) the sum of the Guaranteed Payments and the Variable Energy Payments that would have been payable to Seller hereunder for the period from May 15, 2002 until the date the Commercial Operation Date occurs had the Project been available and provided capacity and Energy to Buyer in the quantities and at the times at which Buyer purchases substitute capacity and energy in accordance with this Section 3.2 from (ii) the amount at which Buyer, acting in a commercially reasonable manner, pays to purchase capacity and energy to substitute for the capacity and energy that would have been purchased during such time period by Buyer from the Project had the Commercial Operation Date occurred on May 15, 2002 and are not supplied from the Project; provided, however, the total Replacement Cost payable by Seller shall in no event exceed 60% of the Guaranteed Payments that would have been payable during the second Contract Year had the Commercial Operation Date occurred on May 15, 2002. For purposes of determining clause (i) above and the proviso above, the Project Capacity and the Monthly Net Capability for each Month shall be assumed to be equal to the MNC for such Month as set forth on Table G-1 in Exhibit G; and the Project shall be assumed to be available each and every On-Peak Hour during the Summer Period, at a level equal to 96.5% of such MNC level, and each and every other hour at a level equal to 91% of such MNC level. For purposes of determining clause (ii) above, the substitute capacity and energy obtained by Buyer shall be deemed not to exceed at any time those levels that could have been produced by the Project consistent with clauses (i) and (ii) above.

(b) If one of the milestones set forth below does not occur by the date set forth opposite such milestone below (which dates shall not be extended due to delays in achievement of such milestones due to events of Force Majeure), Buyer shall, during the 30-day period following the date opposite such milestone, have the option to terminate this Agreement by providing ninety (90) Days' prior written notice to Seller, which termination shall not be effective if the applicable milestone is achieved by the end of such ninety (90) Day period.

<u>Milestone</u>	<u>Date</u>
Delivery of gas turbines, steam turbine and heat recovery steam generators to site	July 31, 2002
First fire of combustion turbines	October 1, 2002
Commercial Operation Date	March 1, 2003

Additionally, (i) if the Commercial Operation Date has not occurred by October 31, 2001, Buyer may by written notice delivered to Seller no later than November 5, 2001, terminate this Agreement effective as of the end of May 14, 2002, or (ii) if the Commercial Operation Date has not occurred by October 31, 2002, Buyer may by written notice delivered to Seller no later than November 5, 2002, terminate this Agreement effective as of the end of May 14, 2003. Buyer's rights to terminate this Agreement under this Section 3.2(b) shall be, except as expressly

provided in Section 3.2(a), Buyer's sole and exclusive remedy for Seller's failure to timely achieve any of the milestones set forth in this Section 3.2(b).

(c) Seller shall provide Buyer with monthly reports regarding the then current status of progress of the construction, commissioning and testing of the Project, the then estimated current Project schedule for achieving the Commercial Operation Date (it being understood that any such estimates made in good faith are not guaranteed by Seller and Seller shall not be liable for any failure of such estimates to prove to be correct), any events or circumstances that have caused such schedule to be changed from prior reports, and other information related to the status of the construction of the Project as Buyer may reasonably request.

### **3.3 Intentionally Omitted.**

### **3.4 Fuel Supply.**

(a) Throughout the Delivery Term, Buyer shall, at all times and at no cost to Seller, deliver and make available, or cause to be delivered and made available to Seller, each Day, the Buyer Fuel Supply Requirement in accordance with the following terms:

(i) Buyer shall provide Fuel that meets the quality specifications as set forth on Exhibit B.

(ii) Buyer shall deliver the Fuel to Seller at the Fuel Delivery Point(s); provided, however, Buyer shall not at any time deliver more Fuel at the Natural Gas Pipeline Company Fuel Delivery Point than fifty percent (50%) of the quantity of Fuel Seller is then entitled to receive at the Natural Gas Pipeline Company Fuel Delivery Point under the Gas Distribution Agreement, unless Seller otherwise agrees. Buyer shall deliver any portion of the Buyer's Fuel Supply Requirement not so delivered at the Natural Gas Pipeline Company Fuel Delivery Point at the Northern Border Pipeline Company Fuel Delivery Point.

(iii) Buyer shall deliver the Fuel at the Fuel Delivery Point(s) at times and at rates of flow that conform to those necessary to permit the LDC under the Gas Distribution Agreement to re-deliver such Fuel to the Project at a rate of flow that matches the Fuel consumption requirements of the Project to provide Scheduled Energy to Buyer hereunder while permitting Seller to comply with the scheduling and balancing requirements applicable to Seller, and while Buyer is permitted to take advantage of "Buyer's share" of the scheduling and balancing flexibility available, under the Gas Distribution Agreement. As used above, "Buyer's share" of scheduling and balancing flexibility means the scheduling and balancing provisions, and the flexibility provided thereunder, of the Gas Distribution Agreement, applied as if the Fuel provided by Buyer hereunder were the only Fuel provided at the Fuel Delivery Point(s) and delivered under the Gas Distribution Agreement, it being the intent of the Parties that Buyer will not be required to assist with respect to balancing for Fuel provided for the Project by other Persons or that other Persons providing Fuel for the Project will be required to assist with

respect to balancing for Fuel provided for the Project by Buyer.

(iv) For the avoidance of doubt, Buyer's Fuel Supply Requirement includes the Fuel required for associated Project parasitic loads and Fuel retention under the Gas Distribution Agreement that is associated with the Fuel supplied and delivered by Buyer hereunder.

(b) Title to the Fuel made available to Seller by Buyer hereunder and the risk of loss of such Fuel shall remain with Buyer but Seller shall be entitled to use such Fuel at the Project or for Fuel retention under the Gas Distribution Agreement.

(c) Buyer shall be responsible for arranging for, and paying the cost of, any necessary transportation to the Fuel Delivery Point(s) of Buyer's Fuel Supply Requirement. Seller shall be responsible for arranging for, and paying the cost of, the transportation of such Fuel from the Fuel Delivery Point(s) to the Project.

(d) Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel for the Project with the operation of the Project (i) by providing the other Party such information as the first Party shall reasonably request relating to the supply and transportation of the Fuel to the Project and the consumption of Fuel by the Project (in each case, on both an historical and estimated future basis) and (ii) by maintaining personnel available at all times to address scheduling of Fuel supply and transportation and to timely provide the information contemplated by clause (i). By 5:00 a.m. of each Business Day, Buyer shall submit an expected schedule of Fuel to be delivered at each Fuel Delivery Point during the 30-hour period commencing at 6:00 a.m. on the same Day (and, if the next Day is not a Business Day, during each Day through the next Business Day), to the extent a similar obligation is required of Seller required by the Gas Distribution Agreement, and shall provide such other Fuel scheduling information on a timely basis as is reasonably required for Seller to comply with its scheduling obligations under the Gas Distribution Agreement. Seller shall promptly communicate proposed Fuel scheduling changes from Buyer to the LDC for the purpose of reconciling the scheduling of such transportation under the Gas Distribution Agreement with Buyer's proposed Fuel scheduling changes. As soon as practicable after an event occurs that may necessitate the need for a change to the scheduling of Fuel to be delivered by Buyer hereunder or the transportation of such Fuel under the Gas Distribution Agreement, the knowledgeable Party shall notify the other, via telephone, of such event and any changes or potential changes that such Party may require to such schedule(s) as a result. Buyer shall submit all necessary changes to the schedule(s) for delivery of Fuel by Buyer in accordance with the requirements of the suppliers and transporters (other than under the Gas Distribution Agreement), as applicable, within the hour in which Buyer receives notice of or actual or deemed knowledge of an event that requires a change to the schedule for any reason, including to avoid incurring imbalance penalties or charges. For purposes of this Section, Buyer shall be deemed to have immediate knowledge of any interruption in the generation of the Project if Buyer installs communication equipment pursuant to Section 4.5(d).

(e) Intentionally Omitted.